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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEVADA**

UNITED STATES OF AMERICA,	)	
	)	In Equity No. C-125-B-ECR
Plaintiff,	)	
	)	<b>SUBMISSION OF PRELIMINARY</b>
WALKER RIVER PAIUTE TRIBE,	)	<b>LEGAL THEORIES BY MONO COUNTY</b>
	)	
vs.	)	
	)	
WALKER RIVER IRRIGATION	)	
DISTRICT, a corporation et al.	)	
	)	
Defendants.	)	
	)	

Pursuant to the District Court's August 20, 2007, Order, Mono County submits the following preliminary legal theories applicable to this matter. As indicated in the October 18, 2007, *Submission of Preliminary Legal Theories by the Walker River Paiute Tribe and the United States of America*, this filing is intended to assist the parties in identifying threshold issues and is not all inclusive or dispositive of Mono County's legal positions. Therefore, Mono County reserves the right to change these theories or to assert additional or different legal theories during the pendancy of this case.

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**A. Virginia Creek Water Rights for the Conway Ranch**

Mono County, through the purchase of the Conway Ranch in 2000, acquired water rights from Virginia Creek, a tributary to the Walker River, which was adjudicated by the United States District Court for the District of Nevada in *United States v. Walker River Irrigation District*, Case In Equity, C-125 (“Walker River Decree” or “Decree”). The Walker River Decree was entered April 14, 1936, and amended April 24, 1940. Under the Decree, J.A. and R.P. Conway, Mono County’s predecessors-in-interests, were awarded the following water rights from Virginia Creek:

<u>Year of Priority</u>	<u>Amount</u>	<u>Number of Acres Irrigated</u>
1860	2.56 cfs	160
1863	2.24 cfs	140
1863	1.20 cfs	75
<b>Total</b>	<b>6.00 cfs</b>	<b>375</b>

(Walker River Decree at p. 57.)

California water law requires that senior appropriative water rights be protected against later appropriators. (See *United States v. State Water Resources Control Board* (1986) 182 Cal.App.3d 82, 101-102; *Irwin v. Phillip* (1855), 5 Cal. 140, 147 *People v. Shirokow* (1980) 26 Cal.3d 301.) Mono County claims a priority date for its Conway Ranch water based upon the Walker River Decree and, therefore, the right to the use of its full water right prior to any adjudicated and non-adjudicated water rights having a junior priority date, including those water rights claimed by or on behalf of the Walker River Paiute Tribe.

**B. Other California Water Rights**

In addition to the rights to water from Virginia Creek described above, Mono County is the owner of several properties adjacent to the west Walker River near the community of Walker, California to which riparian rights attach pursuant to California’s riparian rights doctrine. (See *Lux v. Haggin*, 69 Cal. 255 (1886).) Mono County is also entitled to the use of groundwater underlying lands owned by it within the Walker River Basin in accordance with State groundwater laws. (See e.g., *Katz v. Walkinshaw*, 141 Cal. 116 (1903).)

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1           **C.       Jurisdiction over Groundwater**

2           The management and regulation of groundwater in California is vested in California's  
3 counties and in local water agencies [*see Baldwin v. County of Tehama*, 31 Cal.App.4<sup>th</sup> 166  
4 (1994), *and see, e.g.*, Cal Gov. Code §61000 et seq. (Community Services Districts); Cal Gov.  
5 Code § 30000 et seq. (County Water Districts); Cal Pub. Util. Code § 15501 et seq. (Public  
6 Utility Districts); Water Code § 50000 et seq. (Reclamation Districts); Cal Water Code § 34000  
7 et seq. (Water Districts); and Cal Water Code § 60000 et seq. (Water Replenishment Districts)].  
8 Groundwater is not part of the Walker River Decree.

9           **D.       Mono County's Preliminary Response to the United States' Legal Theories**

10           **1.       Weber Reservoir**

11           With respect to the United States' claim that it is entitled to store water from the Walker  
12 River in Weber Reservoir for all purposes recognized under federal law and assert a priority  
13 date for that right of April 15, 1936, Mono County asserts that its adjudicated and non-  
14 adjudicated water rights within the Walker Basin that are senior to those rights claimed by the  
15 United States would have priority over the claimed rights.<sup>1</sup>

16           **2.       Lands Transferred or Restored to the Reservation**

17           The United States claims a reserved water right for lands first transferred or restored to the  
18 reservation pursuant to the authority of the Act of June 22, 1936 (Pub. L. 748, 74<sup>th</sup> Cong.)  
19 ("1936 Act"). Under the *Winters* doctrine there is a reserved water right to a quantity of water  
20 sufficient to fulfill the purpose of the reservation with a priority date of the date of reservation.  
21 (*See Winters v. United States*, 207 U.S. 564 (1908).) In the event of lands restored to or  
22 reacquired by a reservation, the priority date is based upon the date of reacquisition (or  
23 restoration) rather than the original date-of-the-reservation. (*See United States v. Anderson*, 736  
24 F.2d 1358, 1363 (9<sup>th</sup> Cir. 1984).) Thus, for lands first transferred or restored to the reservation  
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27 <sup>1</sup> Throughout this section, Mono County refers to water rights "claimed" by and on behalf of the  
28 Tribe, in recognition of the fact that there may be arguments against any entitlement by the  
Tribe to additional water rights.

pursuant to the 1936 Act, any right proven under applicable laws would have a priority date of the date the lands were transferred or restored to the reservation *at the earliest*.

**E. Bridgeport Reservoir**

Bridgeport and Topaz Reservoirs were built by the Walker River Irrigation District (“WRID”) and were designed to provide water for irrigation. Topaz Reservoir is on the West Walker River straddling the California-Nevada boundary. Bridgeport Reservoir is located on the East Walker River near the town of Bridgeport in Mono County, California.

California State Water Resources Control Board Water Rights Order No. 90-18 (*In the Matter of the Complaint by California Trout, Inc. against Walker River Irrigation District*, License 9407 (Application 1389), Bridgeport Reservoir), provides for the WRID to maintain a minimum pool in Bridgeport reservoir depending upon the type of water year and to maintain a minimum release from the reservoir of not less than 20 cubic feet per second (“cfs”). (*Id.*, Water Rights Order No. 90-18 at p. 31.) As the minimum pool and minimum release requirements for Bridgeport Reservoir are based upon the requirements of California law (*see California Trout, Inc. v. State Water Resources Control Board*, 218 Cal.App.3d 187 (1990); *and see* California Fish & Game Code §§ 5946, 5937), any action which might affect the adjudicated water rights for the operation of Bridgeport Reservoir must be consistent with those requirements.

The water right for Bridgeport Reservoir has a priority date of August 8, 1919 (Water Rights Order No. 90-18) and is therefore senior to any water rights claimed by or on behalf of the Walker River Paiute Tribe.

Dated: December 27, 2007

Respectfully submitted,  
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By: \_\_\_\_\_  
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